



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 07-0015

## IN THE MATTER OF SHAWN S. WINSOR

### DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Shawn Winsor, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Winsor. The Commission concluded its inquiry and, on December 13, 2006, found reasonable cause to believe that Winsor violated G.L. c. 268A, §§19, 20, 23(b)(2) and 23(b)(3).

The Commission and Winsor now agree to the following findings of fact and conclusions of law:

#### -Findings of Fact-

1. At all relevant times, Winsor was chair of the Lancaster Board of Health ("BOH"). Winsor stepped down from the BOH in approximately September 2006.
2. As a BOH member, Winsor was a municipal employee as defined in G.L. c 268A, §1(g).
3. In spring 2004, Winsor, along with BOH member Robert Baylis and a BOH administrative assistant, attempted to find a vendor to mow the town's capped landfill. The landfill needed to be mowed soon or the BOH faced potential fines from the Department of Environmental Protection ("DEP"). They were not successful in finding a vendor.
4. In or about early June 2004, when they could not find another vendor, Winsor and Baylis decided to mow the landfill themselves.
5. At its June 3, 2004 meeting, Winsor and another BOH member signed a blank voucher authorizing payment for mowing the landfill to a yet-to-be-determined vendor. By this meeting, Winsor knew that he and Baylis would be doing the mowing and would get paid for that mowing through this voucher.
6. The voucher did not reflect the amount of payment, but was instead blank.
7. The BOH would usually not approve a voucher prior to awarding a contract and prior to the vendor performing the work. According to Winsor, the BOH did so here out of concerns about paying the vendor out of the current fiscal year's funds and concerns about the DEP levying fines.
8. At all relevant times, Winsor owned a landscaping company called Bowen Landscaping.
9. On June 25, 2004, Winsor submitted an invoice from Bowen Landscaping to the BOH in the amount of \$4,890. The invoice was for Bowen Landscaping mowing the landfill.

10. A vendor would usually submit an invoice for work that has already been performed. As of June 25, 2004, no one had yet mowed the landfill.

11. On or about June 25, 2004, upon receiving the invoice, the BOH administrative assistant filled in the name "Bowen Landscaping" and the amount of \$4,890 on the blank voucher approved at the June 3, 2004 BOH meeting. There is no evidence that the administrative assistant was aware that Winsor was the owner of Bowen Landscaping.

12. On July 15, 2004, the town issued a check for \$4,890 to Bowen Landscaping. The mowing had still not taken place.

13. On or about July 15, 2004, Winsor had the BOH hold the check until the mowing could be performed.

14. On August 14, 2004, Baylis rented a tractor. Winsor and Baylis mowed the landfill that same day. Winsor used the rented tractor while Baylis used his own tractor.

15. On August 16, 2004, the check made out to Bowen Landscaping was cashed and Winsor received the money.

16. Thereafter, Winsor subtracted the cost of the rental tractor used to mow the landfill (\$388), gave Baylis approximately \$1,800 for Baylis's part in mowing the landfill, and kept the remainder of the money, approximately \$2,700.

17. In August 2005, Winsor self-reported his actions to the State Ethics Commission. He falsely reported that he hired an uninsured contractor to do the mowing and simply used his own company to process the payment. He also falsely claimed he did not profit from the arrangement.

### **-Conclusions of Law-**

#### *-Section 19-*

18. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>1/</sup> as such an employee in a particular matter<sup>2/</sup> in which, to his knowledge, he has a financial interest.<sup>3/</sup>

19. As BOH chair, Winsor was a municipal employee.

20. The decision to award the landfill mowing contract was a particular matter.

21. Winsor and Baylis tried to find a vendor to do the job, but were unsuccessful. When Winsor and Baylis decided to mow the landfill themselves and seek payment from the town, they effectively decided as BOH members to award the contract to mow the town's landfill to themselves. By so doing, they participated in that particular matter.

22. Therefore, by awarding a contract from which he was to be paid, Winsor participated as a BOH member in a particular matter in which to his knowledge he had a financial interest, thereby violating §19.

23. Additionally, the decision whether to approve a voucher authorizing payment to a vendor is a particular matter.

24. On June 3, 2004, by approving a blank voucher authorizing payment to an unnamed vendor, Winsor participated in that particular matter.

25. Where Winsor approved the voucher authorizing payment knowing that he would be paid from such authorization, he participated as a BOH member in a particular matter in which to his knowledge he had a financial interest, thereby violating §19.

*-Section 20-*

26. Section 20 prohibits a municipal employee from knowingly having a financial interest in a contract with his municipality unless an exemption applies.

27. The above described arrangement between the town and Winsor and Baylis, by which they mowed the landfill, was a contract.

28. Winsor knew he had a financial interest in that contract.

29. No exemption to §20 applied to permit Winsor to have such a financial interest.

30. Therefore, as a Lancaster municipal employee, by knowingly having a financial interest in a contract with the town, Winsor violated §20.

*-Section 23(b)(2)-*

31. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his official position to secure for others an unwarranted privilege of substantial value which are not properly available to similarly situated individuals.

32. As a BOH member, Winsor used his position to secure a \$4,890 contract and payment for his own company. The contract and payment were privileges.

33. The contract was unwarranted because it was not properly awarded.

34. The payment was unwarranted because it was authorized through an improperly approved voucher and payment was issued prior to the work having been performed.

35. Where the contract was worth \$4,890 and the payment was for \$4,890, both were unwarranted privileges of substantial value.

36. Therefore, by using his position to improperly secure a \$4,890 contract and payment for himself and Baylis, Winsor violated §23(b)(2).

**-Resolution-**

In view of the foregoing violation of G.L. c. 268A by Winsor, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Winsor:

(1) that Winsor pay to the Commission the sum of \$5,000.00<sup>4/</sup> as a civil penalty for violating G.L. c. 268A, §§19, 20, and 23(b)(2);

(2) that Winsor pay to the Commission the sum of \$2,700.00 as a civil forfeiture for the money he improperly received for mowing the town landfill; and

(3) that Winsor waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** May 10, 2007

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<sup>1</sup> "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

<sup>2</sup> "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

<sup>3</sup> "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

<sup>4</sup> The civil penalty reflects both the number of allegations and that Winsor falsely represented his actions to the Ethics Commission.